

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-93-E - ORDER NO. 2022-27

JANUARY 11, 2022

IN RE: Dominion Energy South Carolina)	ORDER APPROVING
Incorporated's Request for "Like Facility")	PARTIAL SETTLEMENT
Determinations Pursuant to S.C. Code Ann. §)	AGREEMENT
58-33-110(1) and Waiver of Certain)	
Requirements of Commission Order No.)	
2007-626 (This Filing Does Not Involve any)	
Change to the Retail Electric or Natural Gas)	
Base Rates))	

I. INTRODUCTION

Dominion Energy South Carolina, Inc. (DESC) filed an application with the Public Service Commission of South Carolina (Commission) on March 10, 2021, seeking "like facility" determinations regarding its proposed replacement of equipment at three sites, Bushy Park, Parr, and Urquhart. DESC asked the Commission to make "like facility" determinations pursuant to section 58-33-110(1) of the South Carolina Code of Laws, or, in the alternative, to waive the requirements of Order No. 2007-626. On November 10, 2021, DESC, the Office of Regulatory Staff (ORS), and all intervenors filed a partial settlement agreement conveying, in part, the parties agreed the Commission should grant DESC's request regarding two of the three sites, Bushy Park and Parr, "such that neither further proceedings under the Siting Act nor an RFP under Commission Order No[s]. 2007-626 or 2018-804(A) shall be required for those Units." (Agreement, p. 2). As more fully set forth below, we approve the partial settlement agreement between DESC, ORS, the

Carolinas Clean Energy Business Association (CCEBA), Sierra Club, the South Carolina Coastal Conservation League and the Southern Alliance for Clean Energy (SCCCL and SACE), and BrightNight, LLC regarding the replacement of turbines at the Bushy Park and Parr sites.

II. FACTS AND PROCEDURAL HISTORY

The nucleus of DESC's request in this docket is the company's proposal to replace aging and inefficient combustion turbines and a steam turbine-generator with modern, efficient, reliable equipment at three operable DESC facilities.

As to its Bushy Park site, DESC states in its request Bushy Park currently has two simple cycle combustion turbines which were installed in 1972, one of which failed in late 2019 and is now in "'mothball' status." Both of these turbines can run on natural gas or fuel oil. (Request, page 2). DESC proposes to replace these two turbines with one combustion turbine having greater winter capability, greater efficiency, requiring "approximately 50% less fuel to generate the same amount of electricity," and which would decrease "significantly" the turbines' emissions. (Request, page 3). DESC further provides that the old turbines were capable, together, of providing only 52 MW capacity in the winter, and of proving a combined capacity in the summer of 40 MW. (Request, page 2). The single replacement turbine, according to DESC, would have "an expected winter output capability of approximately 57 MW." (Request, page 3). DESC asserts the Commission need not address whether the proposal amounts to replacing an existing facility with a like facility, arguing Bushy Park is not a major utility facility, and does not fall within the parameters of the Code dealing with the certification of major utility

facilities. The old turbines at Bushy Park operated at a combined winter capacity of 34 MW, and the new turbine is expected to have a winter output of about 57 MW. (Request, pages 3, 4). DESC cites to Commission Order No. 2008-469, arguing the Commission has previously allowed its predecessor, SCE&G, to replace turbines without submitting an RFP. (Request, page 3).

At the Parr site, DESC's request explains it operates four, 1970-installed combustion turbines, capable of running on either natural gas or fuel oil. (Request, pages 3, 4). Two of the turbines can jointly provide 34 MW capacity in the winter and 27 MW in the summer. The other two turbines can jointly provide 39 MW in the winter and 33 MW in the summer. The four turbines also provide a secondary source of power to the V.C. Summer Nuclear Station. DESC would like to replace the four old turbines with two combustion turbines with a winter output capability of 57 MW. (Request, page 4). Thus, it appears the old four turbines could provide a combined 73 MW capacity in the winter, and the two replacement turbines can together provide 114 MW capacity in the winter. DESC indicates the replacements require 35% less fuel to operate than did two of the old turbines to provide the same amount of electricity, and about 34% less fuel to generate the same amount of electricity than the other two. The replacements would also reduce emissions significantly.

DESC further contends since no one replacement turbine is designed for a capacity of more than 75 MW at the Parr site, neither turbine is a "major utility facility" under section 58-33-20, and, therefore, neither turbine requires a siting approval or "like facility" determination as set forth in § 58-33-110(1).

In the request, DESC asserts it operates four combustion turbines at the Urquhart site, three of which were originally placed into operation in 1969, and one 1997 combustion turbine was installed in 1999. In addition, the site utilizes a natural gas boiler that supplies steam to a generator, originally placed into operation in 1955. DESC requests an order allowing it to replace the four combustion turbines with one single combustion turbine, asserting the currently operated four turbines have a combined winter of capacity of 97 MW, but the replacement turbine will provide approximately 117 MW of winter output capability. DESC also seeks to replace the old steam unit, currently capable of providing 96 MW of winter capacity with a single combustion turbine with winter output capability of also about 117 MW.

After DESC filed its request, the Commission's Clerk's Office prepared a Notice of Filing and Hearing and Prefile Testimony Deadlines, establishing a hearing date of September 16, 2021. ORS filed a notice of appearance pursuant to section § 58-4-10, and CCEBA, Sierra Club, SCCCL and SACE, and BrightNight¹, (collectively, intervenors), joined the docket as approved by Chief Hearing Officer directives. Thereafter, the parties engaged in discovery and made procedural requests. On July 29, 2021, the Commission granted the motion of CCEBA, SCCCL, SACE, and the Sierra Club, which was also supported by ORS, to hold the proceeding in abeyance until sixty days after DESC filed its 2021 IRP Update. *See* Order No. 2021-521. The parties continued to make filings regarding procedural requests and on October 12, 2021, CCEBA, Sierra Club, SCCCL and

¹ The Commission granted BrightNight's petition to intervene out of time in Order No. 2021-772, dated November 24, 2021, and, thus, BrightNight did not participate prior to that date.

SACE jointly moved to modify the procedural schedule and establish a briefing schedule. On October 18, 2021, DESC filed the prefiled direct testimony of Andrew R. Walker, its consultant. On October 22, 2021, ORS recommended DESC provide the Commission with an allowable *ex parte* briefing regarding DESC's concerns raised if resolution of the docket is delayed. On November 10, 2021, DESC informed the Commission of the partial settlement agreement indicating agreement regarding Bushy Park and Parr, and a request the Commission hold further procedural deadlines in abeyance "until the all[-]source RFP for the Urquhart replacement is completed." The parties indicated the requested allowable *ex parte* briefing would not be necessary, nor would the Commission need to act upon the outstanding motion regarding procedural dates if it approved the partial settlement.

On December 14, 2021, the Commission voted to approve the partial settlement agreement between DESC, ORS, CCEBA, Sierra Club, SCCCL and SACE, and BrightNight.

III. APPLICABLE LAW

Pursuant to section 58-33-110, S.C. Code of Laws (2015), of the Utility Facility Siting and Environmental Protection Act, a certificate from the Commission is required before a utility may construct a major utility facility; however, the replacement of an existing facility with a like facility does **not** constitute construction of a major utility facility:

No person shall commence **to construct** a major utility facility without first having obtained a certificate issued with respect to such facility by the Commission. The **replacement of an existing facility with a like facility**, as determined by the Commission, **shall not constitute construction** of a major utility facility.

§ 58-33-110(1) (emphasis added).

A “major utility facility” is defined, in part, as an “electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy-five megawatts.” § 58-33-20(2).

The General Assembly designated the Commission as overseer of public utilities:

Except as otherwise provided in Chapter 9 of this title, the commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

§ 58-3-140 (A).

The authority and power of the Commission to regulate electric utilities is also established, in part, in section 58-27-140(1) of the Code, which notes the Commission, upon petition, may “ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities.” Furthermore, the Commission’s power is broadly construed: “[t]he enumeration of the powers of the Commission as herein set forth shall not be construed to exclude the exercise of any power which the Commission would otherwise have under the provisions of law.” § 58-27-230.

ORS is vested with power and authority to inspect the property of electric utilities:

The Office of Regulatory Staff has the right at any and all times to inspect the property, plant, and facilities of any electrical utility and the South Carolina Public Service Authority and to inspect or audit at reasonable times the accounts, books, papers, and documents of any electrical utility and the South Carolina Public Service Authority. For the purposes herein mentioned an employee or agent of the

Office of Regulatory Staff may during all reasonable hours enter upon any premises occupied by or under the control of any electrical utility or the South Carolina Public Service Authority. An employee or agent of the Office of Regulatory Staff authorized to administer oaths has the power to examine under oath any officer, agent, or employee of the electrical utility and the South Carolina Public Service Authority, in relation to the business and affairs of the electrical utility or the South Carolina Public Service Authority, but written record of the testimony or statement so given under oath must be made.

§ 58-27-190 (Supp. 2021).

The Code requires an electric utility to provide efficient service to its customers: “[e]very electrical utility shall furnish adequate, efficient and reasonable service.” § 58-27-1510.

South Carolina case law indicates stipulations are binding upon the parties to the stipulation:

“A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys. Stipulations, of course, are binding upon those who make them.” A stipulation is an agreement, an understanding. The court must construe it like a contract, i.e., interpret it in a manner consistent with the parties’ intentions. Because the court construes it like a contract, a stipulation that is unambiguous and explicit must be construed according to the terms the parties have used, as those terms are understood in their plain, ordinary, and popular sense.

Porter v. South Carolina Public Service Comm., 333 S.C. 12, 30, 507 S.E.2d 328, 337 (1998), quoting *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998).

IV. ANALYSIS

DESC seeks in this docket to replace equipment at facilities which are already in existence. DESC does not seek to construct new facilities, but rather to update aging, inefficient equipment at previously constructed sites. Electric utilities are required by

statute to provide “adequate, efficient and reasonable service.” S.C. Code Ann. § 58-27-1510. The parties, including ORS and all intervenors, submitted an executed and stipulated settlement agreement to the Commission establishing all parties agreed with DESC’s request the Commission make a “like facility” determination, or waive the requirement of Order No. 2007-626, regarding the replacement of equipment at the Bushy Park and Parr sites, and to hold the request regarding the Urquhart site in abeyance.

V. FINDINGS OF FACT

After review of the evidence in the record, the Commission makes the following findings of fact:

1. Each and every party in this docket signed and supported the partial settlement agreement, including DESC, ORS, and all intervenors—CCEBA, SCCCL and SACE, Sierra Club, and BrightNight.

2. In executing the partial settlement agreement, all parties stipulated and agreed, and no party opposed, DESC’s request the Commission grant “like facility” determinations pursuant to section 58-33-110(1) or waive the requirements of Order No. 2007-626 as to DESC’s Bushy Park and Parr sites as to the proposed replacements in this docket.

3. In executing the partial settlement agreement, all parties stipulated and agreed, and no party opposed, the replacement of equipment by DESC at the Bushy Park and Parr sites, as requested in this docket, shall not require further proceedings under the Siting Act, nor a request for proposal proceeding under Commission Order Nos. 2007-626 and 2018-804(A).

4. In executing the partial settlement agreement, all parties stipulated and agreed, and no party opposed, asking the Commission to hold the procedural issues and the scheduled hearing in abeyance as to the Urquhart site until DESC receives the results of the all-source RFP regarding the Urquhart site proposal.

5. In addition to the partial settlement agreement, the record contains the pre-filed direct testimony of Andrew R. Walker, DESC consulting engineer, attesting, in part, to the advanced age and inefficiency of the equipment at the Bushy Park and Parr sites, as well as to the reliability concerns DESC has regarding Bushy Park and Parr.

6. We find the partial settlement agreement executed by all parties supporting DESC's request to replace equipment at the Bushy Park and Parr sites, as set forth in this docket, without proceeding under the Siting Act or pursuant to an RFP process under Order Nos. 2007-626 or 2018-804(A), is just and reasonable.

7. We find the partial settlement agreement executed by all parties as to the Urquhart site, holding the proceeding in abeyance until the all-source RFP process concludes, is just and reasonable.

8. Any matters that were not made a part of the partial settlement agreement, such as the retirement of combustion turbines at the Hardeeville and Coit sites, are not addressed or approved by this order.² Further, the Commission makes no finding regarding DESC's peaking generation plan as it relates to any site or proposal.

² See DESC correspondence dated March 10, 2021: "The peaking generation replacement plan will also allow the Company to retire three other existing combustion turbines at the Hardeeville and Coit sites."

VI. CONCLUSIONS OF LAW

1. The Commission has the authority to regulate public utilities, as set forth in sections 58-3-140 (A) and 58-27-140(1) of the South Carolina Code of Laws.
2. The Commission concludes approval of the partial settlement agreement, executed by all parties in this docket, including ORS, is just and reasonable pursuant to sections 58-3-140(A) and 58-27-140(1) of the South Carolina Code of Laws.

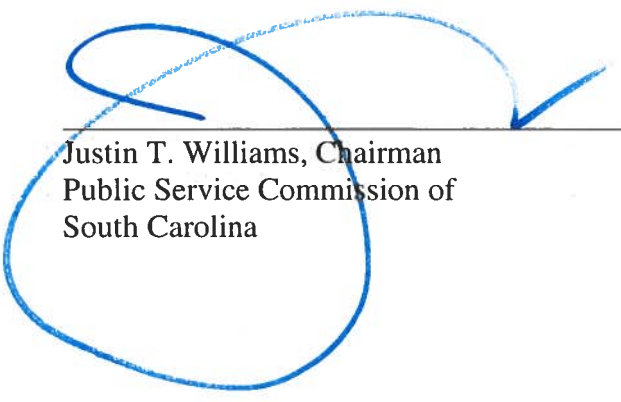
VII. ORDERING PROVISIONS

IT IS THEREFORE ORDERED:

1. The partial settlement agreement executed by all parties in this docket is hereby approved and attached as Order Exhibit 1.
2. As set forth in the partial settlement agreement, matters relating to DESC's request concerning the replacement of equipment at its Urquhart site, including the procedural schedule and hearing in the docket, shall be held in abeyance until Dominion Energy of South Carolina, Inc. completes the all-source request for proposal regarding the Urquhart site and shall be decided by the Commission separately and apart from this Order.
3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:




Justin T. Williams, Chairman
Public Service Commission of
South Carolina

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2021-93-E**

Dominion Energy South Carolina,
Incorporated's Request for Like Facility
Determinations Pursuant to S.C. Code Ann.
§58-33-110(1) and Waiver of Certain
Requirements of Commission Order No. 2007-
626

**PARTIAL SETTLEMENT
AGREEMENT BETWEEN ALL
PARTIES AND PROPOSED SCHEDULE
FOR FUTURE PROCEEDINGS**

This Settlement Agreement is made by and between Dominion Energy South Carolina, Inc. ("DESC"), the South Carolina Office of Regulatory Staff ("ORS"), the Carolinas Clean Energy Business Association, the Sierra Club, the South Carolina Coastal Conservation League and the Southern Alliance for Clean Energy, and BrightNight, LLC ("Intervenors") (collectively referred to as the "Parties");

WHEREAS, on March 10, 2021, DESC requested certain determinations from the Public Service Commission of South Carolina (the "Commission") related to its plan to construct five aeroderivative units at its Urquhart, Bushy Park, and Parr Stations (the "Units").

WHEREAS, DESC requested (a) a like-facility determination pursuant to S.C. Code Ann. §58-33-110(1) concerning the two units planned for Urquhart Station; and (b) a determination that the requirements of Commission Order No. 2007-626 and Order No. 2018-804(A) which relate to requests for proposals ("RFPs") did not apply to any of the five Units; or (c) in the alternative to request (b), for a waiver of RFP requirements for the five Units.

WHEREAS, in the more than seven months following DESC's filing of the request, ORS and other Parties have conducted discovery related to the request;

WHEREAS on October 18, 2021, DESC filed verified pre-filed direct testimony providing the factual basis for its requests;

WHEREAS, in its pre-filed direct testimony and earlier filings, DESC indicated that notwithstanding the pending request for a waiver of the RFP requirement, it was conducting an all-source RFP concerning the Units, the results of which it expects to be available in early 2022;

WHEREAS, on October 12, 2021, the Sierra Club, South Carolina Coastal Conservation League, the Southern Alliance for Clean Energy, and the Carolinas Clean Energy Business Association (collectively "Movants") filed a joint motion to modify the procedural schedule related to DESC's requests, seeking, among other things, a Commission directive to DESC to pause the all source RFP until after the Commission issues a decision on the legal issues;

WHEREAS, the Parties have engaged in discussions concerning these matters and in the spirit of compromise have reached the following consensus agreement and stipulation to limit the issues in dispute among them and to provide for a reasonable procedural schedule for the conclusion of this matter;

NOW THEREFORE, the Parties hereby stipulate and agree to the following:

1. The relief requested by DESC should be granted with respect to the Parr and Bushy Park Units such that neither further proceedings under the Siting Act nor an RFP under Commission Order No. 2007-626 or 2018-804(A) shall be required for those Units.

2. The Parties request that the Commission hold in abeyance the hearing and all future procedural matters associated with the proposed Urquhart Units until DESC receives the results of an all source RFP, to be developed through the RFP stakeholder process described below, in relation to the Urquhart replacements.

3. As part of the RFP development process, the Parties will work collaboratively to develop an RFP that, *inter alia*:

- A. Includes the use of Charles River Associates, or another mutually agreed upon third-party, as an independent evaluator and monitor who will be responsible for administering the RFP, ensuring fair and equal evaluation of responsive bids, and serve as a third-party stakeholder engagement facilitator. After consultation with the independent evaluator and monitor, DESC shall approve and adopt the RFP requirements and evaluation criteria and make the RFP award.
- B. Includes the evaluation of costs and benefits to the utility system and ratepayers that extends beyond mere replacement of existing capacity, if such benefits are additional to and reasonably consistent with the intended capacity replacement,
- C. Accurately characterizes the minimum needs for reliability-related services,
- D. Provides for broad technology neutral participation of supply-side, demand-side, hybrid, and distributed resources, consistent with ensuring system reliability, including consideration of a portfolio of resources as the least cost replacement, provided however, that in the context of this RFP, resources bid into the RFP must individually or in combination with other partial bids supply each necessary component of the RFP, including capacity, black start, voltage support, and other ancillary services so as to qualify for consideration as meeting the RFP requirements, and

- E. Allows bids for less than the total amount of capacity or services needed, such that DESC and the independent evaluator and monitor can construct portfolios of resources that, in combination, meet system needs.
- F. During the RFP stakeholder process, the independent evaluator and monitor shall document in written minutes each and every objection or proposal for modification to the RFP requirements and process raised during the stakeholder process. If consensus on the RFP documents and process has not been reached at the conclusion of the RFP stakeholder process, then the independent evaluator and monitor shall prepare a statement of the unresolved issues as reflected in the written minutes. The Company will promptly file that statement with the Commission in Docket No. 2021-93-E accompanied by a request that the Commission make a final determination as to the contested issues and convene a hearing as soon as possible but no later than sixty (60) days after the Company's filing. Within thirty (30) days of the Company's filing, all parties may file prefile direct testimony setting forth their positions concerning the contested matter. Parties may file rebuttal testimony within fifteen (15) days in response to the other parties' direct testimony. Objections or comments not raised by a party in the stakeholder process, as reflected in the written minutes, may not be raised in proceedings challenging the RFP.

4. DESC agrees to make public the identity of the responsive bidders, and the details of all bids received (capacity, type, size, cost, etc.), anonymized, so the specific bidder is not revealed in conjunction with any bid, and confidentiality is maintained, and provide a detailed

report or prefiled supplemental direct testimony from the independent evaluator and monitor that transparently explains the evaluation process used to select bids.

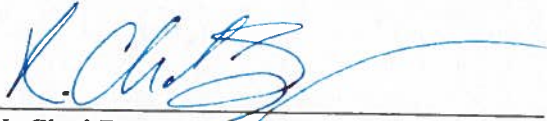
5. The Parties further request that the Commission suspend the current deadlines for filing of testimony in this docket until the all source RFP for the Urquhart replacements is completed. Instead, as soon as reasonably possible, DESC shall file supplemental direct testimony setting forth the proposal following the all source RFP for the Urquhart replacements. The Parties request that the Commission then establish a prefiling schedule giving the other Parties thirty (30) days to prefile their direct testimony, and giving DESC fifteen (15) days to pre-file rebuttal testimony.

6. Nothing in this agreement or proceeding shall constitute a final determination of the reasonableness or prudence of any costs incurred by DESC related to the replacement units at Bushy Park, Parr, or Urquhart. The reasonableness and prudence of any costs incurred by DESC related to the replacement of the Bushy Park and Parr units, as well as any investments made by DESC following the all source RFP related to the Urquhart replacements, shall be subject to review in the appropriate future proceedings.

[SIGNATURE PAGES FOLLOW]

WE AGREE:

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WE AGREE:

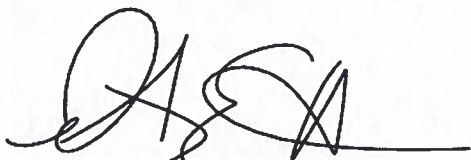
**Representing South Carolina Coastal Conservation League and Southern Alliance for
Clean Energy**

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WE AGREE:

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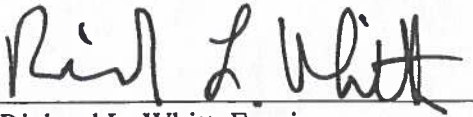
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WE AGREE:

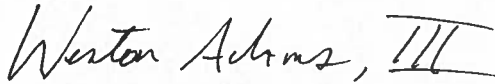
CAROLINAS CLEAN ENERGY BUSINESS ASSOCIATION

A handwritten signature in black ink, appearing to read "Richard L. Whitt", written over a horizontal line.

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